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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|---|-------------|----------------------|---------------------|------------------|
| 09/834,208 | 04/13/2001 | G. Thomas Wolf | | 3950 |
| 7590 | 09/08/2004 | | EXAMINER | |
| PETER P. TUNG, PH.D. 6567 GALWALY DRIVE CLARKSVILLE, MD 21029 | | | MENDOZA, MICHAEL G | |
| | | | ART UNIT | PAPER NUMBER |
| | | | 3731 | |
| DATE MAILED: 09/08/2004 | | | | |

Please find below and/or attached an Office communication concerning this application or proceeding.

| Office Action Summary | Application No. | Applicant(s) | |
|------------------------------|------------------------|---------------------|--|
| | 09/834,208 | WOLF, G. THOMAS | |
| | Examiner | Art Unit | |
| | Michael G. Mendoza | 3731 | |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) Responsive to communication(s) filed on 19 July 2004.
2a) This action is **FINAL**. 2b) This action is non-final.
3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4) Claim(s) 1-3 and 5-13 is/are pending in the application.
4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5) Claim(s) _____ is/are allowed.

6) Claim(s) 1-3 and 5-13 is/are rejected.

7) Claim(s) _____ is/are objected to.

8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.

 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) All b) Some * c) None of:
1. Certified copies of the priority documents have been received.
2. Certified copies of the priority documents have been received in Application No. _____.
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) Notice of References Cited (PTO-892)
2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
4) Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
5) Notice of Informal Patent Application (PTO-152)
6) Other: _____.

DETAILED ACTION

Response to Amendment

1. Applicant's request for reconsideration of the finality of the rejections of claims 1-3 and 5-10 of the last Office action is persuasive and, therefore, the finality of that action is withdrawn.

Response to Arguments

2. Applicant's arguments, see page 6, lines 6-14, filed 19 July 2004, with respect to the rejection(s) of claim(s) 1-3 and 5-10 under U.S.C. 35 103(a) have been fully considered and are persuasive. Therefore, the rejection has been withdrawn. However, upon further consideration, a new ground(s) of rejection is made in view of Norfleet 6418929.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.
4. Claims 1-3 and 5-13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Norfleet 6418929 in view of Dyrud et al. 5819731.
5. Norfleet teaches an oxygen mask having a means for being secured over the nose and mouth of a patient, the improvement comprising: a pair of elastic bands, both end of each pair affixed at points of attachment to each of both sides of the mask; and

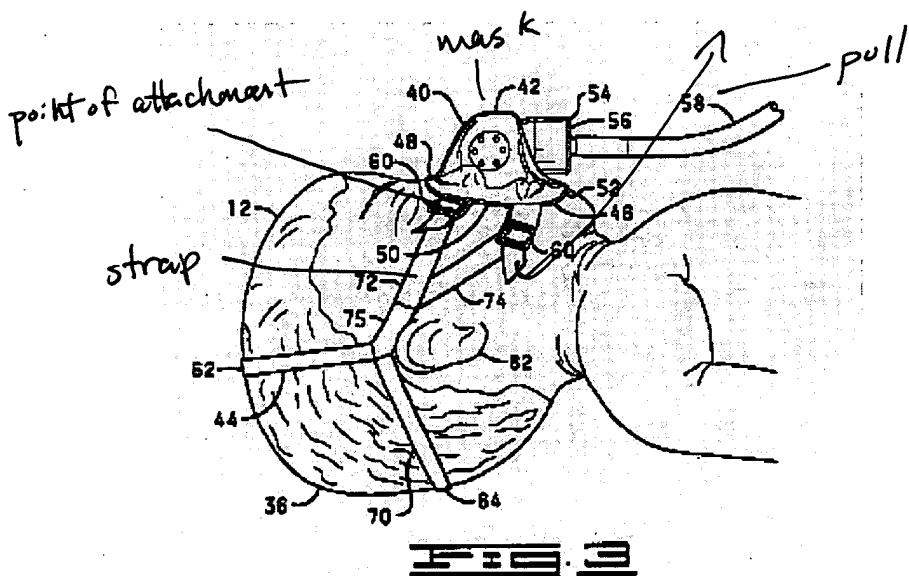
Art Unit: 3731

fully capable of being adjustably securable to the patient by pulling the ends anteriorally through the points of attachment (see fig.) It should be noted that Norfleet fails to teach bands extendible to loop over and around each ear of the patient.

6. Dyrud et al. teaches a mask with common strap for looping around the ear of patient for securing a mask. Therefore it would have been obvious to one of ordinary skill in the art to modify the mask of Norfleet to include the strap of Dyrud et al. to prevent entanglement of the wearer's hair.

7. Norfleet/Dyrud teaches wherein the elastic bands are affixed at four separate points on the mask (fig. 3); wherein the elastic bands are affixed at two separate points on the mask (figs. 1 & 2).

8. As to claims 11-12, Norfleet/Dyrud fails to specifically teach the use of a flap valve. However, it is well known in the art of oxygen masks to have an exhalation port with a valve to allow exhaled air to be forced out to the atmosphere and not allow air from the atmosphere into the mask. Evidenced by 4098271 and 4865027.



Contacts

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael G. Mendoza whose telephone number is (703) 305-3285. The examiner can normally be reached on Mon.-Fri. 8:00 a.m. - 5:00 p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Glenn Dawson can be reached on (703) 308-4304. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 872-9306 for regular communications and (703) 872-9306 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0858.

MM

MM
September 2, 2004


GLENN K. DAWSON
PRIMARY EXAMINER